

REMARKS

This is in response to the Official Action currently outstanding with regard to the present application, which Official Action the Examiner has designated as being FINAL.

Claims 1-29 were pending in this application at the time of the issuance of the currently outstanding FINAL Official Action. By the foregoing Amendment, Applicant is proposing the amendment of Claims 1, 4, 15, 16, 18, 19-21 and 23-28 set forth hereinabove. Applicant does not propose the cancellation, addition or withdrawal of any claims by this submission. Accordingly, in the event that the Examiner grants the entry of the foregoing Amendment, Claims 1 and 4-29 as hereinabove amended will constitute the Claims under active prosecution in this application.

The Claims as they will stand in the event that the Examiner grants entry to the foregoing amendment are set forth above showing the changes made and including appropriate status identifiers as required by the Rules.

More particularly, in the currently outstanding Official Action the Examiner has:

1. Failed to re-acknowledge Applicants' claim for foreign priority under 35 USC §119 (a)-(d) or (f), and reconfirmed the receipt of the required copies of the priority documents by the United States Patent and Trademark Office – **These facts are noted for the sake of good order and completeness of prosecution, the Examiner previously acknowledged Applicant's claim for foreign priority and the receipt of the required certified copy of the priority document in this prosecution;**
2. Failed to confirm his acceptance of the drawings as originally filed as part of the above-identified application on 17 January 2002 – **This fact also is noted for the sake of good order and completeness of prosecution, the Examiner previously approved the drawings as originally filed in this prosecution;**

3. Rejected Claims 1-3, 28 and 29 under 35 USC §102(e) as being anticipated by Seo, et al (US Patent 6,538,971 B2); and,
4. Indicated that Claims 4-27 are allowed (specifically agreeing that Applicants' previous Amendment of this application satisfactorily removed the 35 USC 112 problems cited by the Examiner in the previous Official Action).

No further substantive comment regarding items 1, 2 and 4 above is deemed to be required in these Remarks.

With respect to item 3 above, the Examiner now has asserted that Claims 1-3, 28 and 29 are anticipated under 35 USC §102(e) by Seo et al (US Patent 6,538,971 B2)).

In response to the Examiner's new ground for rejection, Applicant by the foregoing Amendment proposes that numerous of the claims be amended for clarity of expression and to correct minor typographical and grammatical errors therein. Applicant respectfully submits that even though many of the amended claims stand allowed, the foregoing amendments correct minor formal errors in the exact wording of the claims as amended in the last amendment in this application, and should be granted entry on that basis. Specifically, these proposed amendments clearly place the claims of this application in condition for allowance, or at least in better form for Appeal, as required by 37 CFR 1.116. A decision so holding in response to this communication is respectfully requested.

Further, by the foregoing Amendment, Applicant proposes that the substance of the limitations of Claims 2 and 3 be added to both Claims 1 and 28, and that Claims 2 and 3 be canceled, without prejudice. Applicant respectfully submits that this Amendment would place Claims 1, 28 and 29 in condition for allowance, or at least in better form for Appeal, as required by 37 CFR 1.116.

More particularly, Applicant respectfully notes that the Examiner has based his rejection of Claim 3, (now proposed to be written in independent form including all of the limitations of its base claim and any intervening claims) upon the following reasoning:

“Regarding claim 3, Seo shows a hole [7] is provided in said second cartridge and a hole is provided at the same coordinate position or a same radial position as said hole in said second cartridge with respect to a disk center location in a said disk recording and reproducing apparatus, regardless of the respective diameters of said first and second disk-recording mediums in said first and second cartridges {Figs. 6 and 9}”

In further support of his rejection of Claim 3, the Examiner has included with the currently outstanding Official Action photocopies of Figs. 6 and 9 of the Seo et al reference whereupon he has written the legends “Various Radial Positions” in association with double arrow headed lines. These double arrow headed lines are drawn respectively (i) from a line connecting diagonally opposite corners of the cartridge 200 shown in Seo’s Fig. 6 to a line parallel thereto at holes 200c superimposed onto depiction of disk cartridge 200, and (ii) from a line connecting diagonally opposite corners of the cartridge 210 shown in Seo’s Fig. 9 (see Seo et al at column 11, line 35) to a line parallel thereto at holes 212c and 212d superimposed onto a depiction of disk cartridge 210. Since both of these double arrow headed lines are essentially the same length, the Examiner concludes that the limitations of Claim 3 of this application are disclosed by the Seo et al reference.

Applicant respectfully disagrees, and submits that contrary to the Examiner’s argument, the Seo reference clearly does not teach, disclose or suggest the invention of Claim 3 of the present application i.e., the Seo reference fails to teach, disclose or suggest that both the first and the second cartridges have holes at the same coordinate position or the same radial position with respect to a disk center position in a disk recording and reproducing apparatus.

In this regard, Applicant respectfully calls attention to the enclosed photocopies of Fig. 6 and Fig. 9 of the Seo reference as they actually appear in the reference patent. In particular, attention is respectfully directed to the fact that in the Seo reference the scale to which Fig. 6 is drawn is substantially the same as the scale to which Fig. 9 is drawn. Applicant respectfully submits that this is abundantly and unambiguously clear when one compares the tray 20 in Fig. 6 (enclosed) with the tray 20 shown in Fig. 9 (enclosed) that the Seo et al reference discloses are one in the same. In other words, as is explained at Column 11, line 35 to Column 12, line 30 of the Seo reference, Fig. 9 is intended to demonstrate the placement of a small cartridge 210 within the dash/dotted lines superimposed on the tray 20 between the holder brackets 40 mounted on the guide pieces 38 on the left and right sides of the tray 20 respectively. Fig. 6, on the other hand, is intended to show that the larger cartridge 200 fits in the tray 20 when the brackets 40 are moved out to the side edges of the tray 20.

In view of the foregoing, Applicants respectfully submit that for reasons unknown, it appears that the photocopy of Fig. 6 of the Seo et al reference attached to the outstanding Official Action (and presumably relied upon by the Examiner) has been reduced in scale from that actually shown in the Seo et al patent such that the larger cartridge 200 depicted therein is made substantially the same size as the smaller cartridge 210 depicted in Fig. 9. Given this modification of the Seo et al disclosure, the relative sizes of the cartridges in both Fig. 6 and Fig. 9 of the Seo et al reference appear to be the same, and the Examiner's hand marking on the photocopies provided with the currently outstanding Official Action appears to support his rejection.

As the attached true copies of the drawings of the Seo et al patent clearly demonstrate, however, the positions of the detecting holes 20d in tray 20 of the Seo et al reference correspond to the holes 200c in the larger disc 200 shown in Seo Fig. 6 (see also, Seo et al at Column 7, lines 40-48). On the other hand, the positions of the detecting holes 20e in tray 20 correspond to the holes 212d in the smaller cartridge 210 as shown in Seo et al, Fig. 9 (see also, Seo et al at Column 12, lines 31-59 whereat this is explained in the context of Fig. 12).

Therefore, Applicants respectfully submit that the detecting holes in the large and small cartridges 200 and 210 respectively in the Seo reference clearly correspond to different holes in the tray 20. In other words, the holes in the cartridges 200 and 210 are mismatched relative to one another with respect to the disk centers thereof. In particular, the holes in the corners of the cartridges 200 and 210 respectively do not align with the same holes in the tray 20 as would be necessary for the Seo et al cartridges to disclose the same thing as original Claim 3 of the present application. Consequently, Applicant respectfully submits that the Seo et al reference clearly and definitely does not anticipate the subject matter of original Claim 3 of this application.

In view of the foregoing facts, Applicants respectfully submit that the Examiner's reliance upon the Seo et al reference and specifically a comparison of the copies of Figs. 6 and 9 thereof that accompanied the present Official Action is misplaced and should be withdrawn. Further, Applicants respectfully submit that the reconsideration herein sought does not raise any issue requiring further consideration and/or search. Rather, it involves only a reconsideration of a reference of record in view of a demonstrated misunderstanding thereof by the Examiner. Applicant respectfully submits that this is not the sort of reconsideration that the rules concerning Final rejections by the United States Patent and Trademark Office were intended to avoid. Instead, Applicant has amended this application so as to be in condition for allowance once the Examiner's erroneous understanding of the disclosure of the reference that he cited in support of his rejection is corrected.

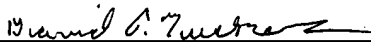
Consequently, in view of the foregoing Amendment and Remarks, Applicant respectfully submits that all of the claims of this application as they will stand in the event that the Examiner grants the entry of the foregoing Amendment are in condition for allowance, or at least in better form for Appeal, as required by 37 CFR 1.116. Accordingly, reconsideration of this application in light of this communication, and the allowance of Claims 1 and 4-29 in response thereto are respectfully requested.

U.S. Serial N. 10/051,829
Tomoyuki MIYAKE
Page 23

Applicant also believes that additional fees beyond those submitted herewith are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. 04-1105, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

Date: September 1, 2005



SIGNATURE OF PRACTITIONER

Reg. No.: 27,840

David A. Tucker

(type or print name of practitioner)
Attorney for Applicant(s)

Tel. No. (617) 517-5508

Edwards & Angell, LLP
P.O. Box 55874

P.O. Address

Customer No.: 21874
505684

Boston, MA 02205
